

# ANTI-HUMAN TRAFFICKING (AMENDMENT) ACT, 2024

No. 2



of 2024

## ARRANGEMENT OF SECTIONS

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### **An Act to amend the Anti-Human Trafficking Act.**

*Date of Assent:* 12.01.2024

*Date of Commencement:* ON NOTICE

ENACTED by the Parliament of Botswana

1. This Act may be cited as the Anti-Human Trafficking (Amendment) Act, 2024, and shall come into operation on such date as the Minister may, by Order published in the *Gazette*, appoint.

Short title and commencement

2. The Anti-Human Trafficking Act (hereinafter referred to as "the Act") is amended in section 2 by inserting in —

Amendment of section 2 of Cap. 08:09

- (a) the definition of "exploitation", immediately after the word "exploitation" appearing in paragraph (h), the words "the exploitation of the prostitution of another person or use in illicit or criminal activities, including trafficking or the production of drugs";
- (b) the definition of "forced labour", immediately after the word "Act" appearing therein, the words "and includes exploitative labour";
- (c) their correct alphabetical order, the following new definitions —  
"commercial sex act" means any sex act on account of which anything of value is given to or received by any person;  
"company" has the meaning assigned to it under the Companies Act;  
"involuntary servitude" includes a condition of servitude induced by means of —

Cap. 42:01

Cap. 04:02  
Cap. 04:01  
Cap. 18:01  
Amendment  
of section 4 of  
the Act

- (a) any scheme, plan or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer harm or physical restraint; or
  - (b) the abuse or threatened abuse of the legal process;
- “Registrar” means Registrar of the court in terms of the High Court Act and the Court of Appeal Act, whichever is applicable; and
- “society” has the meaning assigned to it under the Societies Act;”.

3. The Act is amended in section 4 (1) by —

- (a) substituting for paragraph (l), the following new paragraph —
  - “(l) a representative from a non-governmental organisation;”;and
- (b) inserting immediately after paragraph (l), the following new paragraphs —
  - “(m) a nominee from the Ministry responsible for health;
  - (n) a nominee from the Ministry responsible for environment and tourism;
  - (o) a representative from the academia;
  - (p) a representative from the media;
  - (q) a representative from the private sector; and
  - (r) a representative from the civil society dealing with matters concerning women;”.

Amendment  
of section 9 of  
the Act

4. The Act is amended in section 9 by —

- (a) substituting for subsection (1), the following new subsection —
  - “(1) Any person who, for the purpose of exploiting another person, recruits, transports, transfers, harbours or receives another person by —
    - (a) threat or use of force or other forms of coercion;
    - (b) abduction;
    - (c) fraud or deception;
    - (d) abuse of power or a position of vulnerability; or
    - (e) giving or receiving payments or benefits to achieve the consent of a person having control over another person,

commits an offence of trafficking in persons and is liable to imprisonment, without the option of a fine and without the suspension of any part thereof, for a term not less than 15 years but not more than 30 years, and to a fine of not less than P500 000 or in default thereof to an additional term of imprisonment of not less than three years but not more than five years.”;

- (b) by substituting for subsection (2), the following new subsection —

"(2) If in any charge under this Part it is alleged that trafficking in persons, as defined in this section, occurred —

- (a) evidence that an offence of trafficking has been committed shall be sufficient proof that trafficking was carried out with the knowledge of the person charged, unless the contrary is proved; and
- (b) the burden of proving any fact which would be a defence to a charge of contravening any provision of this Part shall lie upon the person charged."; and
- (c) by inserting immediately after subsection (4), the following new subsection —

"(5) Any person who, being a director, promoter, an agent or officer of a corporation, company or society, and through the means set out in subsection (1), commits an offence of trafficking in persons is liable to the same penalty as provided for in subsection (1):

Provided that where an offence under this Act is committed by a body corporate —

- (i) the body corporate shall be liable to the same fine under subsection (1),
- (ii) with the consent or connivance of, or is proved to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or any person who purported to act in such capacity, such director, manager, secretary, officer or person shall be liable to the same penalty under subsection (1), and
- (iii) the director, promoter, agent or officer of such corporation, company or society may be liable thereon jointly, or jointly and severally."

5. The Act is amended by inserting immediately after section 9, the following new section —

"Severe forms of trafficking in persons

9A. (1) Where, for the purpose of trafficking in persons or in the course of trafficking in persons, a person —

- (a) removes an organ from the victim's body;
- (b) causes serious injury or death of the victim or another person, including death as a result of suicide;
- (c) coerces or deceives the victim to fall pregnant, or thereafter takes the child away;
- (d) subjects the victim to slavery or forced labour;
- (e) instigates the victim to commit an act of prostitution;
- (f) instigates the victim to take part in an obscene publication or obscene display;
- (g) commits a sexual offence against the victim;
- (h) uses force, coercion or fraud or the threat of violence;
- (i) uses drugs, any habit-forming drugs or medication; or

Insertion of section 9A in the Act

(j) commits an offence of trafficking in persons as part of the activity of an organised criminal group, the penalty shall be imprisonment, without the suspension of any part thereof, for not less than 30 years or a maximum term of life imprisonment, and to a fine of not less than P1 000 000 or in default thereof to an additional term of imprisonment of not less than five years but not more than seven years.

(2) Severe forms of trafficking in persons shall, for purposes of subsection (1), include —

- (a) trafficking of a child, person with a disability or victim who is particularly vulnerable, irrespective of the means of trafficking,
- (b) trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the commercial sex is a child;
- (c) the recruitment, harboring, transportation, provision, or obtaining of a person for labour or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery; and
- (d) trafficking by a person who has been previously convicted for the same or similar offences.

(3) Where, upon the trial of a person for an offence in terms of this section, the court considers that the offence of a severe form of trafficking has not been proved, but is satisfied that the person is guilty of an offence in terms of section 9, the court shall find the person guilty of the offence and convict and sentence such person accordingly.

(4) Any sentence imposed in respect of an offence under this section shall be consecutive to and not concurrent with any other sentence imposed on the same accused person, and no sentence or any part of any sentence imposed in respect of an offence under this section shall be suspended.”.

Amendment of  
section 10 of  
the Act

**6.** The Act is amended in section 10 by —

- (a) substituting for the words “a fine not exceeding P500 000 or to imprisonment for a term not exceeding 25 years, or to both” appearing in subsection (1), the words “the same penalty as if he or she has committed an offence of a severe form of trafficking in persons under section 9A.”; and
- (b) substituting for the words “a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both” appearing in subsection (2), the words “the same penalty as if he or she has committed an offence of a severe form of trafficking in persons under section 9A.”.

7. The Act is amended in section 12 by substituting for the words “a fine not exceeding P100 000 or to imprisonment for a term not exceeding 15 years, or to both, and on a subsequent conviction, to a fine not exceeding P400 000 or to imprisonment for a term not exceeding 20 years” appearing therein, the words “the same penalty as if he or she has committed an offence of trafficking in persons under section 9 (1)”.
- Amendment of section 12 of the Act
8. The Act is amended in section 12A by —
- (a) substituting for the words “a fine not exceeding P500 000 or to imprisonment for a term not exceeding 20 years, or to both” appearing in subsection (2), the words “the same penalty as if he or she has committed an offence of trafficking in persons in section 9 (1)”; and
- (b) substituting for the words “a fine not exceeding P1 000 000 or to a maximum term of life imprisonment or to both” appearing in subsection (3), the words “the same penalty as if he or she has committed an offence of a severe form of trafficking in persons under section 9A.”
- Amendment of section 12A of the Act
9. The Act is amended by inserting immediately after section 12A, the following new section —
- Insertion of section 12B in the Act
- “Attempts 12B. Any person who attempts to commit any offence under this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets or does any act preparatory to the commission of an offence under this Act, commits an offence and is liable to the same penalty, and to be proceeded against in the same manner, as if he or she had committed the offence.”
10. The Act is amended in section 20 (3) by substituting for the words “is liable to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 10 years, or to both” appearing therein, the words “and is liable to imprisonment for a term not less than 15 years and to a fine of not less than P20 000 but not exceeding P50 000.”
- Amendment of section 20 of the Act
11. The Act is amended by inserting the following new section immediately after section 22 —
- Insertion of section 22A in the Act
- “Corporate liability 22A. (1) Where a corporation, company or society is convicted of an offence under this Act, the Registrar shall, forthwith, notify the public authority which licensed or registered the corporation, company or society of the conviction.
- (2) The public authority shall, upon receipt of the notification under subsection (1), review the licence or registration, and may where necessary revoke or cancel the licence or registration of such corporation, company or society.”.
12. The Act is amended in section 30 by substituting for the words “a fine not exceeding P4 000 000 or to imprisonment for a term not exceeding 20 years, or to both” appearing in subsection (1), the words “the same penalty as if he or she has committed an offence of trafficking in persons under section 9 (1).”.
- Amendment of section 30 of the Act

PASSED by the National Assembly this 4th day of December, 2023.

BARBARA N. DITHAPO,  
*Clerk of the National Assembly.*